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Roy F. Brabson

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DILLON & YUDELL LLP  
8911 N. CAPITAL OF TEXAS HWY.  
SUITE 2110  
AUSTIN, TX 78759

EXAMINER

PAN, JOSEPH T

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ROY F. BRABSON  
and  
LINWOOD HUGH OVERBY, JR.

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Application 10/007,581  
Technology Center 2100

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Mailed: January 9, 2009

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Before PAMELA S. BENNETT, *Review Team Paralegal*.

BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on June 27, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

**APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER**

Appellants filed an Appeal Brief dated July 25, 2007. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c)(v), an Appeal Brief must include the following:

(v) ***Summary of Claimed Subject Matter.*** A concise explanation of the invention defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. [Emphasis added.]

The “Summary of Claimed Subject Matter” appearing on pages 2-4 of the Appeal Brief is deficient because it does not properly map the independent claims to the specification. Correction is required.

Section 1205.03 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 5, August 2006) states, in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject

matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

### **CONCLUSION**

Accordingly, it is ORDERED that the application is returned to the examiner:

- 1) to hold the Appeal Brief filed July 25, 2007 defective, as required by 37 CFR § 41.37(d);
- 2) for notification to appellants to submit a paper which corrects the Appeal Brief's "Summary of Claimed Subject Matter" under 37 CFR § 41.37(c)(1)(v);
- 3) for acknowledgement and consideration of any "paper" submitted by Appellants to correct the Appeal Brief; and
- 4) for such further action as may be appropriate.

PSB

Dillon & Yudell LLP  
8911 N. Capital of Texas Hwy.  
Suite 2110  
Austin, TX 78759